

T H E  
S U M M A R Y C A S E  
O F T H E  
A M E R I C A N L O Y A L I S T S .

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**H**IS Majesty's faithful American subjects, who have sacrificed every thing to their attachment to Great-Britain, were called forth to support the cause of their king and the laws of their country, by every motive which can actuate the hearts of zealous citizens, and by those assurances of protection, and even of recompence, which are held the most sacred among mankind.

What the inducements were, under which they acted, will appear from the laws and papers of authority that are now respectfully submitted to the consideration of those, the peculiar province of whom it is to judge of their force, and to give efficacy to the inference, which it is the chief purpose of this Case to draw from them.

The statute of 11 Henry VII. ch. 1. declared, " That, by the common law of England, the subjects are bound, by their duty of allegiance, to serve their prince against every rebellion, power, or might; and that, whatsoever may happen in the fortune of war against the mind of the prince, it is against all law and good conscience, that such subjects, attending upon such service, should suffer for doing their duty of allegiance."

" Here," says the celebrated Mr. Justice Forster, " is a clear parliamentary declaration, that, by the ancient constitution of England, founded on principles of reason, equity, and good conscience, the allegiance of the subject is due to the king for the time being, and to him alone. This putteth the duty of the subject upon a rational and safe bottom; he knoweth that allegiance and protection are reciprocal duties; he hopeth for protection from the crown, and he payeth his allegiance to it in the person of him whom he seeth in the peaceable possession of it. He entereth not into the question of title; he hath neither leisure nor abilities, *nor is he at liberty to enter into that question*: but he seeth the fountain, whence the blessings of government flow to him, and there he payeth his allegiance; and this excellent law hath secured him against all after-reckonings on that account." [Crown-Law, 8vo. edit. p. 399.]

At the commencement of the late revolt in 1774, the secretary of state wrote to the American governors, exhorting them to *offer every encouragement to those colonists, who appeared in principle adverse to the proceedings of the mal-contents*; thereby adding, to the declarations of the law, the encouragement of positive promise. [For that Letter, see Parliamentary-Register, 1775, vol. I. p. 186.]

It was in pursuance of the laws before-mentioned, that the king issued a proclamation in August, 1775, declaring, " That all the subjects of this realm, and of the dominions to the same belonging, are bound by law to be aiding in the suppressing of such rebellion; commanding all loyal subjects to use their utmost endeavours to withstand such rebellion in the Colonies; and giving assurances, *that none ought to doubt the protection which the law will afford to their loyalty and zeal*." [This proclamation appeared in the London Gazette of the 24th of August, 1775.]

The royal commissioners, Lord and General Howe, issued a similar proclamation in June, 1776, *under the express authority of the act of parliament, 16 George III. ch. 5.* declaring, among other assurances, " That due consideration shall be had to the meritorious services of all persons who shall assist in restoring the public tranquillity, and that every suitable encouragement shall be given to those who shall promote the re-establishment of legal government." [See Annual Register, 1776.]

The proceedings of parliament, at the repeal of the Stamp-act, being intended as a monitory example for the future, gave encouragement to the Loyalists, equal at least to the foregoing assurances. In February, 1766, the secretary of state proposed a resolve, which was warmly seconded by Mr. Pitt himself, who soon became Lord Chatham, " *That the king's subjects, residing in the Colonies, who have manifested a desire to comply with, or to assist in carrying into execution, the Stamp-act, or any other act of parliament, have acted as dutiful and loyal subjects, and are intitled to the favour and protection of this house*." [See Com. Journa. 30 vol. p. 603.]

Hence

Hence it is reasonable to infer, that the conduct, which was meritorious in the case of a temporary tumult, was much more so in the case of a long rebellion: That, as sufferers from tumults were declared to be entitled to the protection and favour of parliament, so sufferers during the late rebellion are much more entitled to reparation, from the declaration of law, the king's promise, and the act of parliament, since the risks and services of the Loyalists have been greater, and their losses beyond comparison larger, owing to the confiscations of the American States, for which the treaty of peace provided but a shadow of relief.

It was not less repugnant to the interests than painful to the feelings of the loyal sufferers, at the end of seven years struggle, when they hoped for retribution and repose, to be thrown back into a state of solicitation and suspense, by a treaty which refers them *for recommendation to a body of men, whom, at the instance of the British nation, they have been induced to irritate beyond forgiveness.*

After reiterated persecutions of the objects of the 5th article of the American treaty, after studied delays, the Congress at length recommended it to the observance and fulfilment of the American governments. But what was foretold of the inefficacy of that recommendation has been but too fatally experienced; *for, not one of the States has complied with the recommendations of Congress,* as might easily be proved, were not the fact universally acknowledged.

Common justice requires, that, since the fund of indemnification, which had been assigned by the American treaty, has altogether failed, a more efficient one ought to be provided. It was a prescience, probably, of that failure, and a sense of that justice, which induced the parliament to appoint commissioners to enquire into the Loyalists services and losses, that the truth of both might be made the ground of subsequent proceedings in parliament.

It is unnecessary to cite Grotius or Puffendorf, Burlamaqui or Vattel, to prove a position, which the civilized world admits to be just, that, though the supreme power may relinquish a part of its territory for the benefit of the whole, the injured individual ought to be indemnified for his consequential loss. And this doctrine, which was adopted by the law of nations, because founded in natural equity, was interwoven into the texture of the British constitution, since the indemnification of the few by the exertions of the many is the great foundation of every social system. Hence arose a familiar case in the proceedings of parliament, that, if a road is to be made, or a canal to be cut, the owner of the soil must be paid for his loss. It was only an extension of this common practice, when equivalent value was granted for rights taken away avowedly to promote the general good. The parliament, therefore, gave compensation to the city of Carlisle for the tolls which were abolished by the act of Union between England and Scotland. [Com. Journ. 15 vol. p. 336.] In the same spirit there were voted £152,037 to the proprietors of heretable jurisdictions in Scotland, which were suppressed after the rebellion of 1745. [Com. Journ. 26 vol. p. 408.] When the interests of commerce required that the charter of the African Company should be recalled, £112,142 were voted as compensation. [Com. Journ. 26 vol. p. 408.] And, when a regard to the public revenue demanded that the royal jurisdiction of the Duke and Dutchess of Athol over the Isle of Man should be invested in the crown, their rights were acquired by an agreement to pay the full value, and not by an act of irresistible power. [Com. Journ. 30 vol. p. 225-8.]

Thus the representatives of the people carefully attend to the interests of the individual, when they wish to gain an advantage to the public.

The equity of repairing to the peaceful the damages, which they may sustain from the violence of insurgents, has formed a part of the law of England during every age. It existed previous to the statute of 1 Geo. I. ch. 5. which subjected every city or hundred to the payment of the value of any *church or house*, that might be either pulled down or damaged within such city or hundred. But this salutary act did not extend to every possible injury that might be done to property. And, in March, 1716, the parliament therefore granted 5579*l.* towards making good the losses sustained by tumultuous and rebellious proceedings in several counties. [Commons Journal, 18th vol. p. 495.] In April, 1725, the parliament, in the same spirit, voted Daniel Campbell 6080*l.* for reparation of his losses, sustained by him, from a riot at Glasgow, on account of his voting in parliament in favour of the malt-tax. [Com. Journal, vol. 20, p. 620.] And the commons conferred a recompence on Charles Dingley for the losses arising from the destruction of his saw-mill by a tumultuous assembly. [Com. Journal, vol. 32, p. 246.] The memorable insurrections of June, 1780, gave rise to an example of an uncommon kind: the injured persons recovered, from the city or the hundreds, for damages done to their dwellings by the mob; but, for losses of other property, the parliament granted the sufferers reparation. And in this manner is the principle established, that, where the law gives the subject no common remedy for his wrong, the legislature is bound to give him peculiar redress.

But, if citizens, who remain tranquil and inactive amidst sedition and tumult, were thus protected and recompensed, what patronage is due to those British subjects, who, as much from inclination as encouragement,



agement, supported the laws at the hazard of their lives and with the loss of their fortunes; and who, at the requisition of the king and the nation, faced rebellion in arms?

This interesting question may be answered by adverting to what the parliament has done at different periods, in cases somewhat similar to the hard one which is now under consideration. In 1689, the house of commons addressed the king, requesting his majesty "*to appoint a fund of credit for the relief of the Irish nobility and gentry, who have lost their estates in Ireland, and have fled hither for refuge.*" [Com. Journal, vol. 10, p. 204-12.] And the house, with the same laudable sense of equity, resolved, "that the trustees for the forfeited estates in Ireland shall make satisfaction for the losses sustained at the siege of Londonderry." [Commons Journal, vol. 13, p. 291-3.]

This application of the rule justified by parliamentary precedents. During K. William's reign.

In April, 1708, there were granted by parliament to the sufferers of Nevis and St. Kitt's, for their losses by the French invasion, 103203*l.* 11*s.* 4*d.* [Com. Journal, vol. 16, p. 109. vol. 17. p. 209-24.] On the petition of Rice, one of the late king James's colonels, stating that, after the capitulation of Limerick, he, *on the encouragement offered him by king William's general*, had brought over his regiment of horse, the house of commons granted him 11420*l.* *as compensation for his eminent services.* [Com. Journ. vol. 15, p. 36, 48, 63.] In 1706, the house of commons, on the petition of Elizabeth Wandsworth, stating, that her husband, on account of his early zeal for king William, in Ireland, *had been condemned as a traitor, and his estate sold*, voted her an annuity out of the Irish forfeitures. [Com. Journal, vol. 15. p. 344.]

During Queen Anne's reign.

By the statute of 1 Geo. I. ch. 44. certain duties were granted to the city of Glasgow, "*as a reward of their duty and loyalty,*" they having sent a battalion to Stirling; in order that others might, by this encouragement, be incited to follow their loyal example. By the 4th Geo. I. ch. 8. the forfeited estates of the rebels were invested in commissioners for the use of the public, and provision was thereby made, that those loyal persons, whose property had been destroyed by the rebels, should be reimbursed out of their estates. And the house of commons moreover voted "certain overplus and other monies, for relief of those from whom the rebels, in 1715, had extorted money." [Com. Journal, vol. 19, p. 54.]

During K. George I.'s reign.

In 1739, the house of commons voted 60000*l.* towards satisfaction to his majesty's subjects for damages sustained by Spanish depredations in America. [Com. Journal, vol. 23, p. 361.] And they voted, to Marret and others, 5000*l.* for the loss of their ship, which had been taken by the Spaniards. [Whitworth's Grants, p. 19.] In 1749, the house granted to the loyal city of Glasgow, 10000*l.* for the same sum, which had been extorted by the late rebels. [Com. Journal, vol. 25, p. 959.]

During K. George II.'s reign.

In 1767, the house of commons voted, to doctor Peter Swinton, 700*l.* for damage done to his estate at Chester during the rebellion in 1745. [Com. Journal, vol. 31, p. 569.]

During the present reign.

Such are the laws and facts, the public assurances and parliamentary precedents, on which the American loyalists found their claims. No person has yet said, that they are not cogent ones. And no person has supposed, that the royal promise and the parliamentary resolves have not pledged the nation, in the face of foreign powers, to make good such actual losses as shall appear to have been suffered in consequence of loyalty to the king and attachment to the government.

Whence the inference is drawn in favour of the loyalists' claim. That the nation is pledged to make them good.

But, it is suggested by some, that, however just the claim may be, the amount is too large for the ability of the nation. It is surely no objection to the granting of just compensation to real loyalists, because there may be pretended ones. And it is as little a valid reason for withholding payment of liquidated debts because the gross claims may seem large to the eye of prepossession. It was not objected to the punctual payment of the German claims, at the peace of 1763, that they appeared very considerable, before commissioners had stated what sums were really due. Nor did any debtor ever add any thing to his credit, by objecting to the payment of a just debt, that it was a large one. And this objection, that they are bulky, was never started by any man, or any party, against the funding of the unfunded debts of the state. It was deemed sufficient that money had been advanced for the public service to induce the people's representatives to ascertain the amount of the sums, and to provide for the payment either of the principal or interest. If this is admitted to be a true rule of determination, it cannot be denied, that the estates, rights, and properties, of the loyal sufferers, which were confiscated on account of their attachment and services to the British government, or which were given as a part of the purchase-money of peace, ought to be much more deemed unfunded debts of the state; because motives of gratitude ought to be superadded to the dictates of justice.

Objections. That the amount is large and the nation exhausted. Answer. These objections were not made to the vast German claims. These objections are not made to just debts. They were never raised against unfunded debts. For it was sufficient that the money had been advanced to the public. This is still stronger in the case of the loyalists. And the same cry has been raised after every war, that the nation was exhausted.

The inability of the nation is a melancholy pretence, which has been suggested at the establishment of every peace since that of 1697; yet, it never prevented the payment or funding of debts, or the renewal of still more expensive wars. In fact, to plead the inability of the nation to satisfy all her debts is to avow to the world that she is bankrupt. That her burthens are great is undeniable, but so are her resources. Does the astonishing industry and traffic of one city, or the splendor of the other, bespeak the

Proofs of the contrary.

the inability of the nation? Have the harvests failed; are the manufacturers unemployed; have the ships been laid up? Is not the exchange, that great criterion of a nation's prosperity and credit, universally in favour of this country? Are not the two great branches of revenue in so improving and productive a state, as that a duty of one per cent. on the annual produce of the excise and customs would most probably be adequate to the interest of the whole liquidated claim?

If such be the affluent condition of this country, and such the claims of the loyalists on its justice, the undersigned agents in their behalf most humbly trust, that no member of parliament will find any difficulty in being of opinion, that their liquidated claims are unfunded debts of the state, which ought to be speedily satisfied or properly secured.

JAMES WRIGHT.  
THOMAS BOONE.  
DUNMORE.  
GEORGE CHALMERS.  
JOSEPH GALLOWAY.  
WILLIAM FRANKLYN.  
GUY JOHNSON.  
GEORGE ROME.  
WILLIAM PEPPEREL.  
PAUL WENTWORTH.

THE  
SUMMARY CASE  
OF THE  
AMERICAN LOYALISTS.